

# EXHIBIT A

**FILED**

Superior Court Of California

County Of Riverside

01/09/2015

**R LOUPE**

**BY FAX**

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF RIVERSIDE

13 HUNTER KIDNER; LIZETTE VARGAS; ) CASE NO.: **RIC1500355**  
14 SAMANTHA KIDNER; and MADELENE )  
15 GELEDZHYAN, on behalf of themselves and ) PAGA REPRESENTATIVE ACTION  
16 all other aggrieved non-exempt employees; ) COMPLAINT  
17 ) By Fax

18 Plaintiffs,

19 v.

20 P.E. CHANG'S CHINA BISTRO, INC., a )  
21 Delaware corporation; and Does 1 through 50, )  
22 inclusive,

23 Defendants.

24 ) (1) Failure to Provide Meal Periods (Cal.  
25 ) Lab. Code §§ 512, 226.7);  
26 ) (2) Failure to Provide Rest Periods (Cal.  
27 ) Lab. Code § 226.7);  
28 ) (3) Failure to Pay All Wages or Minimum  
Wages (Cal. Lab. Code §§:204, 1194,  
1198, 1194.2, and 1197);  
29 ) (4) Failure to Pay Overtime Wages (Cal.  
30 ) Lab. Code §§ 2698, *et seq.*, 226, and  
1174, and IWC Wage Order 5-2001(7));  
31 ) (5) Failure to Pay Split Shift Premiums (Cal.  
32 ) Lab. Code § 1198);  
33 ) (6) Failure to Pay Reporting Time Wages  
(Cal. Lab. Code §§ 204 and 1198);  
34 ) (7) Illegal Wage Statements (Cal. Lab. Code  
35 ) §§ 226 and 1174; IWC Wage Order 5-  
2001(7));  
36 ) (8) Unlawful Repayment of Wages (Cal.  
37 ) Lab. Code §§ 221, 350, 351).  
38 ) (9) Failure to Pay all Wages Due Upon  
Ending Employment (Cal. Lab. Code §§  
201–203);  
39 ) (10) Private Attorney General Act (Cal. Lab.  
40 ) Code §§ 2698 *et seq.*).

41 ) **DEMAND FOR JURY TRIAL**

1 Plaintiffs, HUNTER KIDNER, LIZETTE VARGAS, SAMANTHA KIDNER, and  
2 MADELENE GELEDZHYAN (collectively, "Plaintiffs"), on behalf of themselves individually  
3 and all aggrieved non-exempt California employees, complain and allege as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against P.F. CHANG'S CHINA BISTRO, INC., a  
7 Delaware corporation ("P.F. CHANG'S") and DOES 1 through 50 (collectively, "Defendants")  
8 for California Labor Code violations occurring from November 19, 2011 up to and including the  
9 date for trial, for Defendants': (1) failure to provide its California non-exempt employees legally  
10 compliant meal periods during all eligible work shifts, or compensation in lieu thereof; (2) failure  
11 to provide its California non-exempt employees legally compliant rest periods during all eligible  
12 work shifts, or compensation in lieu thereof; (3) failure to pay all wages and minimum wages to its  
13 California non-exempt employees; (4) failure to pay its California non-exempt employees  
14 overtime wages; (5) failure to pay its California non-exempt employees premiums for all splits  
15 shifts worked; (6) failure to pay its California non-exempt employees reporting time wages; (7)  
16 furnishing legally-incompliant wage statements to its non-exempt California employees; (8)  
17 unlawful collection of, receipt of, and sharing in wages belonging to their employees; and (9)  
18 failure to pay all final wages due to its California non-exempt employees upon ending their  
19 employment. The above California Labor Code violations constitute violations of the Labor Code  
20 Private Attorneys General Act of 2004 (Cal. Labor Code section 2698, *et seq.*) ("PAGA") for  
21 which Plaintiffs, as aggrieved employees, have been appointed the private attorneys general for  
22 purposes of prosecuting Defendants for such violations on behalf of all of Defendants' current and  
23 former California non-exempt employees during the applicable statutory period.

24  
25 **JURISDICTION**

26 2. This Court has jurisdiction over Plaintiffs and over Defendants' current and former  
27 California non-exempt employees concerning the claims for relief under California Labor Code  
28 sections 2698 *et seq.*, 201–203, 226, 226.7, 512, 1174, and 1198, the IWC Wage Orders, and

1 Plaintiffs, HUNTER KIDNER, LIZETTE VARGAS, SAMANTHA KIDNER, and  
2 MADELENE GELEDZHYAN (collectively, "Plaintiffs"), on behalf of themselves individually  
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13 California non-exempt employees; (4) failure to pay its California non-exempt employees  
14 overtime wages; (5) failure to pay its California non-exempt employees premiums for all splits  
15 shifts worked; (6) failure to pay its California non-exempt employees reporting time wages; (7)  
16 furnishing legally-incompliant wage statements to its non-exempt California employees; (8)  
17 unlawful collection of, receipt of, and sharing in wages belonging to their employees; and (9)  
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20 Private Attorneys General Act of 2004 (Cal. Labor Code section 2698, *et seq.*) ("PAGA") for  
21 which Plaintiffs, as aggrieved employees, have been appointed the private attorneys general for  
22 purposes of prosecuting Defendants for such violations on behalf of all of Defendants' current and  
23 former California non-exempt employees during the applicable statutory period.

24

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**JURISDICTION**

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27 California non-exempt employees concerning the claims for relief under California Labor Code  
28 sections 2698 *et seq.*, 201-203, 226, 226.7, 512, 1174, and 1198, the IWC Wage Orders, and

1 California Business and Professions Code section 17200, *et seq.* Plaintiffs are California citizens.

2           3.     This Court has jurisdiction over this action under the California Constitution,  
3 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except  
4 those given by statute to other courts.” There is no statute assigning jurisdiction over Plaintiffs’  
5 claims to another court.

6       4.     This Court has jurisdiction over all defendants because each defendant is a citizen  
7 of California, has sufficient minimum contacts in California, and otherwise intentionally avails  
8 themselves of the California market so as to render this Court's jurisdiction over them consistent  
9 with traditional notions of fair play and substantial justice.

## VENUE

12       5.     Venue as to P.F. CHANG'S is proper in this court under California Code of Civil  
13 Procedure sections 395(a) and 395.5 because many of the acts herein complained of occurred in  
14 the County of Riverside, and Plaintiffs' resulting injuries were sustained there. Defendants own or  
15 maintain two restaurants in the County of Riverside, transact business in the County of Riverside,  
16 have an agent or agents within the County of Riverside, and are otherwise found within the  
17 County of Riverside. The unlawful acts alleged herein have had a direct effect on Plaintiffs and  
18 Defendants' California-based current and former employees, and occurred within the State of  
19 California and also within Riverside County. Defendants employ, employed, and or will employ  
20 aggrieved non-exempt employees in Riverside County and other counties within California.

## PARTIES

23 6. At all material times, Plaintiffs were residents of the Counties of Riverside, San  
24 Bernardino, Los Angeles, and Orange, in the State of California. With the exception of  
25 MADELENE GELEDZHYAN, each plaintiff is a former employee of Defendants.

26 7. At all material times, P.F. CHANG'S employed Plaintiffs. P.F. CHANG'S is an  
27 international restaurant chain with two restaurant locations within the County of Riverside,  
28 California, where many of the events alleged in this complaint arose.

1       8.       At all material times, P.F. CHANG'S conducted business within the County of  
2       Riverside, in the State of California. All acts described herein occurred at no less than four of  
3       Defendants' California restaurants: Riverside, Chino Hills, Beverly Hills, and Anaheim.

4           9.       Under California Labor Code section 2698, *et seq.*, Plaintiffs currently represent  
5       themselves individually and all other current and former California non-exempt employees  
6       concerning claims against Defendants in this representative action. P.F. CHANG'S was the  
7       employer of Plaintiffs and all of its other current and former non-exempt employees in the State of  
8       California during the applicable statutory period.

9           10. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of  
10 participation in the conduct herein alleged of Defendants sued as DOES 1 through 50, inclusive;  
11 but on information and belief, allege that Defendants are legally responsible for the payment of  
12 penalties and damages to Plaintiffs and to Defendants' other current and former California non-  
13 exempt employees by virtue of Defendants' unlawful actions and practices and therefore sue these  
14 defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names  
15 and capacities of the DOE defendants when ascertained.

16        11. Plaintiffs are informed and believe, and based thereon allege that Defendants acted  
17 in all respects pertinent to this action as the agent of the other defendants, carried out a joint  
18 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are  
19 legally attributable to the other defendants. On information and belief, a unity of interest and  
20 ownership between each defendant exists such that all defendants acted as a single employer of  
21 Plaintiffs and the other of their current and former non-exempt employees in California.

## PAGA ALLEGATIONS

24 12. Plaintiffs hereby incorporate by reference each and every one of the preceding  
25 paragraphs above as though fully set forth herein.

26 13. During Plaintiffs' employment with Defendants, Defendants engaged in numerous  
27 misleading, deceptive, and unlawful practices which undercompensated Plaintiffs and Defendants'  
28 other non-exempt California employees, all in violation of the California Labor Code as more

1 specifically described in the paragraphs under each Cause of Action delineated in this Complaint.

2 14. Plaintiffs bring this action on behalf of themselves individually and on behalf of all  
3 other of Defendants' current and former non-exempt employees in the State of California under  
4 the PAGA, California Labor Code sections 2698, *et seq.* More specifically, the groups of  
5 employees that Plaintiffs have been appointed by the State of California to represent in the  
6 capacity of private attorneys general are as follows:

7 All current, former, or prospective non-exempt employees of Defendants in the  
8 State of California who were not relieved of all duties for a *first* meal period by  
9 the end of the fifth hour of work and or a *second* meal period by the end of the  
10 tenth hour of work, and who were not compensated with one hour of pay for all  
such instances any time during their employment with Defendants from  
November 19, 2011 up to and including trial for this matter. ("Represented  
Employee Group No. 1");

11 All current, former, or prospective non-exempt employees of Defendants in the  
12 State of California who did not receive a *first* paid 10 minute rest period during  
13 shifts of greater than 3.5 but less than 6 hours, a *second* rest period during shifts  
14 greater than 6 hours but less than 8 hours, or a *third* rest period during shifts  
greater than 10 hours but less than 12 hours, any time during their employment  
with Defendants from November 19, 2011 up to and including trial in this  
matter. ("Represented Employee Group No. 2");

15 All current, former, or prospective non-exempt employees of Defendants in the  
16 State of California who were not paid at least minimum wage for all time they  
17 actually worked for Defendants from November 19, 2011 up to and including  
trial for this matter. ("Represented Employee Group No 3");

18 All current, former, or prospective non-exempt employees of Defendants in the  
19 State of California who were not paid one and one-half times their regular rate of  
20 pay for all time they worked for Defendants in excess of 8 hours per day or 40  
hours per week, or twice their regular rate of pay for all time worked for  
Defendants in excess of 12 hours per day, from November 19, 2011 up to and  
including trial for this matter. ("Represented Employee Group No 4");

21 All current, former, or prospective non-exempt employees of Defendants in the  
22 State of California who worked one or more split shifts for Defendants from  
23 November 19, 2011 up to and including trial for this matter, but who were not  
compensated with one hour of pay for all such shifts. ("Represented Employee  
Group No. 5");

24 All current, former, or prospective non-exempt employees of Defendants in the  
25 State of California who worked one or more shifts where they were sent home  
26 before working half of their scheduled shift, but without being paid for half of  
their usual or scheduled day's work, but in no event less than two hours nor  
more than four hours, at the employee's regular rate of pay from November 19,  
2011 up to and including trial for this matter. ("Represented Employee Group  
No. 6");

28 All current, former, or prospective non-exempt employees of Defendants in the  
State of California who have not been provided accurate itemized wage

1 statements in violation of the California Labor Code and applicable wage orders  
2 during any time from November 19, 2011 up to and including the time of trial  
for this matter. ("Represented Employee Group No 7");

3 All current, former, or prospective non-exempt employees of Defendants in the  
4 State of California from whom Defendants collected, received, or shared in  
wages belonging to the employee in violation of California Labor Code sections  
5 221, 350, and 351 from November 19, 2011 up to and including trial in this  
matter. ("Represented Employee Group No. 8");

6 All former non-exempt employees of Defendants in the State of California who  
7 were not provided timely payments of all final wages upon separation of  
employment with Defendants in violation of California Labor Code sections 201,  
8 202, and 203 from November 19, 2011 up to and including trial in this matter.  
("Represented Employee Group No. 9").

9 15. Represented Employee Group Nos. 1 through 9 shall be collectively referred to  
10 herein as the "Represented Employees". Plaintiffs and the Represented Employees were each  
11 aggrieved in that Defendants violated all of the California Labor Codes and IWC Wage Orders  
12 cited as follows:

- 13 a. Defendants failed to maintain legally compliant meal and rest period  
14 policies. As a result, Plaintiffs and other of Defendants' non-exempt  
15 employees were not provided legally compliant and timely meal and rest  
16 periods; nor were they provided meal and rest period premium payments in  
17 lieu thereof. Additionally, Defendants forced Plaintiffs and their other non-  
18 exempt employees to perform work during their breaks.
- 19 b. Defendants restricted Plaintiffs and their other non-exempt employees from  
20 recording or reporting all of their actual regular and overtime worked.
- 21 c. Defendants failed to maintain a legally compliant split-shift interval policy.  
22 As a result, Defendants did not issue a premium payment to Plaintiffs and  
23 their other non-exempt employees for all work shifts they worked split shift  
24 intervals.
- 25 d. Defendants caused Plaintiffs and their other non-exempt employees to leave  
26 work prior to working half of their scheduled shifts, and then failed to pay  
27 those employees reporting time pay (i.e., half of their usual or scheduled  
28 day's work, but in no event less than two hours nor more than four hours, at

the employee's regular rate of pay).

e. Defendants pay their non-exempt employees twice per month. But, the wage statements Defendants have furnished to Plaintiffs and their other non-exempt employees fail to itemize all applicable hours and hourly rates of pay, including the applicable overtime rates, as required by California Labor Code sections 226(a) and 1174, and the IWC Wage Order 5-2001(7). These deficient wage statements prevent Plaintiffs and Defendants' other non-exempt employees from being able to determine whether they are being paid correctly for all overtime worked.

f. Defendants required plaintiffs Hunter Kidner and Lizette Vargas and other non-exempt employees to claim a minimum of 15% of their sales as tips, regardless of the amount of tips actually received, which resulted in employees over-reporting their tips in violation of California Labor Code sections 221, 350, and 351.

g. Defendants failed to timely pay certain plaintiffs Hunter Kidner, Lizette Vargas, and Samantha Kidner all final wages owed upon ending their employment. Nor did Defendants pay those plaintiffs any of the payments required for untimely final wage statements under California Labor Code section 203.

20       16. On behalf of themselves individually and the Represented Employees, Plaintiffs  
21 seek, among other things, penalties, attorney's fees, costs, interest, and expenses under the  
22 California Labor Code and IWC Wage Orders.

**FIRST CAUSE OF ACTION**  
**FOR FAILURE TO PROVIDE MEAL PERIODS**  
(Against All Defendants)  
[Violation of California Labor Code §§ 226.7, 512]

26 17. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
27 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
28 PAGA Representative Action Complaint.

1       18. Plaintiffs, for themselves and Represented Employee Group No. 1 plead this cause  
2 of action against Defendants.

3       19. California Labor Code section 512 provides that no employer shall employ any  
4 person for a work period of more than five (5) hours without one duty free meal period of not less  
5 than thirty (30) minutes.

6       20. IWC Wage Order 5-2001(11)(A) and California Code of Regulation, Title 8,  
7 section 11050(11)(A) require that employers authorize and permit all employees to take a duty  
8 free meal period of at least thirty (30) minutes within the first five (5) hours of their shift.

9       21. IWC Wage Order 5-2001(11)(B) and California Code of Regulations, Title 8,  
10 section 11050(B), provide that if an employer fails to provide an employee a duty free meal period  
11 in accordance with this section, the employer shall pay the employee one (1) hour of pay at the  
12 employee's regular rate of compensation for each workday that the meal period is not provided.

13       22. Plaintiffs and Represented Employee Group No. 1 are entitled to damages under  
14 California Labor Code section 226.7 of one additional hour of pay at the employee's regular rate  
15 of pay for each duty free meal period that was not provided.

16       23. Defendants, and each of them, have intentionally and improperly denied meal  
17 periods to Plaintiffs and Represented Employee Group No. 1 in violation of all applicable Wage  
18 Orders, California Regulations, and California Labor Code sections.

19       24. For at least three years preceding the filing of this action, Defendants failed to  
20 provide Plaintiffs and Represented Employee Group No. 1 meal periods as required by law.  
21 Furthermore, Defendants attempted to conceal their employees' rights under California Labor  
22 Code section 512 by using vague, ambiguous, and thus facially incompliant, language in their  
23 Employee Handbook and Employee Training Presentation.

24       25. With regards to employee meal and rest periods, Defendants' Employee Handbook  
25 simply states: "P.F. Chang's China Bistro will comply with all state labor laws to provide hourly  
26 Employees with required Meal Periods and Rest Breaks."

27       26. Concerning employee meal periods, Defendants' Employee Training Presentation  
28 notifies its employees that: "For shifts of at least 5 hours but less than 6 hours: we must provide a

1 30 minute unpaid meal break, but it can be waived" and "For shifts of 6 hours or more: we must  
2 provide a 30 minute unpaid meal break, and it CANNOT be waived."

3 27. Defendants' statements regarding employee meal periods are facially incompliant  
4 with applicable California Regulations, California Labor Law, and California Wage Orders.  
5 Defendants' written policies do not inform non-exempt employees that their meal period must be  
6 taken within the first five (5) hours of their shifts as required by IWC Wage Order 5-2001(11)(B)  
7 and California Code of Regulations, Title 8, section 11050(B).

8 28. In addition, Defendants required Plaintiffs and Represented Employee Group No. 1  
9 to sign illegal meal period waiver agreements, styled "California Meal Period Waiver Agreement"  
10 (the "Agreement"), whereby Defendants' California non-exempt employees would purportedly not  
11 just waive their rights to a meal period during all shifts of 6 hours or less but would also  
12 characterize every meal period they were entitled to take as "on duty" meal periods, without any  
13 regard for its employees' job duties. The California Code of Regulations specifically provides that  
14 any employee not relieved of "all duty during a 30 minute meal period" qualifies as having taken  
15 an "on duty meal period," which counts towards time worked. (8 CCR § 11050, at ¶ 11(A).) Such  
16 "on duty" meal periods are only permitted "when the nature of the work prevents an employee  
17 from being relieved of all duty and when by written agreement between the parties an on-the-job  
18 paid meal period is agreed to." (*Id.*, emphases added.) The Department of Labor Standards  
19 Enforcement ("DLSE") has identified several factors to consider when determining whether "the  
20 nature of the work" is sufficient to permit an on-duty meal period agreement, which include: (1)  
21 the type of work, (2) the availability of other employees to provide relief to an employee during a  
22 meal period, (3) the potential consequences to the employer if the employee is relieved of all duty,  
23 (4) the ability of the employer to anticipate and mitigate these consequences such as by scheduling  
24 the work in a manner that would allow the employee to take an off-duty meal period, and (5)  
25 whether the work product or process will be destroyed or damaged by relieving the employee of  
26 all duty. (DLSE Opinion Letter 2009.06.09, at p. 7.)

27 29. The nature of the work at P.F. CHANG'S is not sufficient to prevent any of  
28 Defendants' California non-exempt employees from taking their meal periods, yet Defendants

1 characterized every single meal period as an "on duty" meal period. None of the aforementioned  
 2 factors permit P.F. CHANG'S to enter into an on-duty meal period agreement with any of its non-  
 3 exempt employees. Plaintiffs and the Represented Employees worked in ordinary restaurant  
 4 customer service. Furthermore, the "on duty" meal period provision of the Agreement was not  
 5 voluntarily agreed to by Plaintiffs and the Represented Employees. For all of these reasons the  
 6 "on duty" provision in the Agreement is illegal.

7       30. Not only is such an "on duty" meal period provision in the Agreement illegal, but  
 8 so too is the "waiver" provision of the Agreement. The California Code of Regulations explicitly  
 9 states that any permissible waiver of a meal period for an employee working more than five but  
 10 less than six hours must be by *mutual consent*. (8 CCR § 11050, at ¶ 11(A), emphases added.)  
 11 However, the employee handbook P.F. CHANG'S issued to its non-exempt California employees  
 12 states: "Employees who choose not to take their breaks, or are prohibited from taking the  
 13 necessary breaks due to business conditions, must sign a waiver indicating that they voluntarily  
 14 waived their break." (Emphasis added.) Thus, P.F. CHANG'S informs its non-exempt employees  
 15 that, per policy, no matter what, the Agreement must be signed. It is therefore not voluntary.

16       31. By virtue of Defendants' unlawful failure to provide timely and compliant meal  
 17 periods to Plaintiffs and Represented Employee Group No. 1, Plaintiffs and Represented  
 18 Employee Group No. 1 have incurred, and will continue to incur, damages in amounts which are  
 19 presently unknown to Plaintiffs, but which exceed the jurisdictional limits of this Court and which  
 20 will be ascertained according to proof at trial.

21       32. Plaintiffs and Representative Employee Group No. 1 are informed, believe, and  
 22 based upon that information and belief allege that Defendants, and each of them, purposely and  
 23 knowingly elected not to compensate Plaintiffs and Represented Employee Group No. 1 an  
 24 additional hour of pay at their regular rate during the occasions they worked more than 5 straight  
 25 hours without a first timely and duty free meal period or more than 10 straight hours without a  
 26 second timely and duty free meal period.

27       33. Defendants, and each of them, acted intentionally, oppressively and maliciously  
 28 toward Plaintiffs and Represented Employee Group No. 1 with a conscious disregard of their

1 rights, or the consequences to Plaintiffs and the Represented Employee Group No. 1, with the  
2 intent of depriving its non-exempt employees of property and legal rights and otherwise causing  
3 Plaintiffs and Represented Employee Group No. 1's injury. Additionally, Plaintiffs and  
4 Represented Employee Group No. 1 are entitled to seek and recover reasonable attorneys' fees and  
5 costs under California Labor Code sections 218.5, 218.6, and 1198, and penalties under California  
6 Labor Code sections 203, 226.7, and 558.

**SECOND CAUSE OF ACTION**  
**FOR FAILURE TO PROVIDE REST PERIODS**  
(Against All Defendants)  
[Violation of California Labor Code § 226.7]

10 34. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
11 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
12 PAGA Representative Action Complaint.

13 35. Plaintiffs, for themselves and on behalf of Represented Employee Group No. 2  
14 plead this cause of action against Defendants.

36. California Code of Regulations, Title 8, section 11050(12) requires that employers  
authorize and permit all employees to take rest periods at the rate of ten (10) minutes for every  
four (4) hours of work, or major fraction thereof.

18       37.    California Code of Regulations, Title 8, section 11050(12)(B) provides that if an  
19 employer fails to provide an employee rest periods in accordance with this section, the employer  
20 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for  
21 each workday that the rest period is not provided. This remedy is codified under California Labor  
22 Code section 226.7.

23 38. For at least three years preceding the filing of this action, Defendants failed to  
24 provide Plaintiffs and Represented Employee Group No. 2 rest periods as required by law.

25       39. Defendants, and each of them, have intentionally and improperly denied rest  
26 periods to Plaintiffs and to Represented Employee Group No. 2 in violation of California Code of  
27 Regulations, Title 8, section 11050(12). Furthermore, Defendants attempted to conceal their  
28 employees' rights concerning mandated rest periods by using vague, ambiguous, misleading, and

1 thus facially incompliant, language in their Employee Handbook and Employee Training  
2 Presentation.

3 40. With regards to employee meal and rest periods, Defendants' Employee Handbook  
4 simply states: "P.F. Chang's China Bistro will comply with all state labor laws to provide hourly  
5 Employees with required Meal Periods and Rest Breaks." Concerning employee rest periods,  
6 Defendants' Employee Training Presentation notifies its employees that: "Employees are provided  
7 one paid ten-minute break for each four hours worked."

8 41. Defendants' statements regarding employee rest periods are facially incompliant  
9 with applicable California Regulations, California Labor Law, and California Wage Orders.  
10 Defendants' written policies do not inform employees that the employee must offer a ten-minute  
11 rest period for each four hours worked, *or major fraction thereof*, as is mandated by California  
12 Code of Regulations, Title 8, section 11050(12).

13 42. By virtue of Defendants' unlawful failure to provide rest periods to Plaintiffs and  
14 Represented Employee Group No. 2, Plaintiffs and Represented Employee Group No. 2 have  
15 incurred, and will continue to incur, damages in amounts which are presently unknown to  
16 Plaintiffs, but which exceed the jurisdictional limits of this Court and which will be ascertained  
17 according to proof at trial. For example, as a result of Defendants' aforementioned policies and  
18 practices, each of Plaintiffs have not received timely and compliant 10-minute duty free rest  
19 periods on numerous occasions. On information and belief, the same is true for the members of  
20 Represented Employee Group No. 2.

21 43. Plaintiffs are informed and believe, and based upon that information and belief  
22 allege, that Defendants, and each of them, knew or should have known that Plaintiffs and  
23 Represented Employee Group No. 2 were entitled to rest periods and purposely elected not to  
24 provide them with rest periods as required by the California Labor Code.

25 ///

26 ///

27 ///

28 ///

1           44. Defendants, and each of them, acted intentionally, oppressively and maliciously  
2 toward Plaintiffs and Represented Employee Group No. 2 with a conscious disregard of their  
3 rights, or the consequences to Plaintiffs and Represented Employee Group No. 2, with the intent  
4 of depriving Plaintiffs and Represented Employee Group No. 2 of property and legal rights and  
5 otherwise causing Plaintiffs and Represented Employee Group No. 2 harm.

6           45. Plaintiffs, for themselves, and on behalf of Represented Employee Group No. 2,  
7 request recovery of rest period compensation under all applicable IWC Wage Orders and  
8 California Code of Regulations, as well as the assessment of any statutory penalties against  
9 Defendants, and each of them, in a sum as provided by the California Labor Code and or other  
10 statutes.

11          46. Further, Plaintiffs and Represented Employee Group No. 2 are entitled to seek and  
12 recover reasonable attorneys' fees and costs under California Labor Code sections 218.5 and 1194,  
13 and penalties under California Labor Code sections 203, 226, and 558.

14

15

**THIRD CAUSE OF ACTION**  
**FOR FAILURE TO PAY ALL WAGES AND FAILURE TO PAY MINIMUM WAGES**  
(Against all Defendants)

[Violations of California Labor Code §§ 204, 1194, 1198, 1194.2, and 1197]

18          47. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
19 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
20 PAGA Representative Action Complaint.

21          48. This cause of action is brought by Plaintiffs, for themselves and on behalf of  
22 Represented Employee Group No. 3 plead this cause of action against Defendants.

23          49. California Labor Code section 1198 provides that it is unlawful to employ persons  
24 for longer than the hours set by the IWC without just compensation. Likewise, it is unlawful to  
25 employ non-exempt employees in California without compensating them for all hours worked.  
26 (See Cal. Labor Code § 204.) And, under California Labor Code sections 1194, 1194.2, and 1197,  
27 it is unlawful for an employer to suffer or permit a California employee to work without paying  
28 wages at the proper minimum wage for all time worked, as required by the applicable IWC Wage

1 Order. Under IWC Wage Order 5-2001(2)(K), within the restaurant industry, the term "hours  
2 worked" means "the time during which an employee is suffered or permitted to work for the  
3 employer, whether or not required to do so."

4 50. Defendants, and each of them, improperly failed to pay all wages earned by  
5 Plaintiffs and Represented Employee Group No. 3 because these employees suffered and or were  
6 permitted to work for Defendants without compensation because of Defendants' policies and  
7 practices. Specifically, Defendants pressured Plaintiffs and Represented Employee Group No. 3  
8 to clock-out but continue working to avoid being reprimanded for not having completed their  
9 assigned tasks—such as "side work"<sup>1</sup>—within their assigned work hours. In fact, if Plaintiffs or  
10 Represented Employee Group No. 3 failed to clock-out and continue their "side work," Defendants  
11 would issue them written reprimands. As another example, Defendants did not pay Plaintiffs and  
12 Represented Employee Group No. 3 for the time Defendants required them to attend mandatory  
13 work meetings, even though Defendants would fire or reprimand Plaintiffs and Represented  
14 Employee Group No. 3 if they did not attend such meetings.

15 51. Therefore, Defendants failed to pay Plaintiffs and Represented Employee Group  
16 No. 3 for all hours worked or at the minimum wage for all time worked. As a result, Plaintiffs and  
17 Represented Employee Group No. 3 are entitled to recover compensation dating back to  
18 November 19, 2011, plus reasonable attorneys' fees and costs of suit under California Labor Code  
19 sections 218.5 and 1194, and penalties under California Labor Code sections 203, 226, and 558.

20  
21 **FOURTH CAUSE OF ACTION**  
**FOR FAILURE TO PAY ALL OVERTIME WORKED**  
(Against all Defendants)

22 [Violations of California Labor Code §§ 510, 1194, and IWC Wage Order 5-2001]

23 52. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
24 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
25 PAGA Representative Action Complaint.

26  
27 1 Defendants assigned each non-exempt employee daily "side work," which consisted of  
28 having a different daily task to complete such as rolling silverware into napkins; filling soy sauce,  
vinegar, and chile oil bottles; taking candles off of the tables; cleaning up the break room; filling  
up the sugar caddies; cleaning the soda machines; or stocking straws, cups, and to-go boxes.

1       53.    This cause of action is brought by Plaintiffs, for themselves and Represented  
2 Employee Group No. 4 plead this cause of action against Defendants.

3       54.    California Labor Code section 510 states, *inter alia*, that any work in excess of  
4 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first  
5 eight hours worked on the seventh day of work in any one workweek shall be compensated at the  
6 rate of no less than one and one-half times the regular rate of pay for an employee; and any work  
7 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular  
8 rate of pay for an employee. California Labor Code section 1194 states that any employee  
9 receiving less than the legal minimum wage or the legal overtime compensation applicable to the  
10 employee is entitled to recover in a civil action the unpaid balance of the full amount of the  
11 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

12       55.    Defendants failed to pay Plaintiffs and Represented Employee Group No. 4 all  
13 overtime worked at one-and-one-half times the regular rate of pay, and or twice the regular rate of  
14 pay. Defendants did so by pressuring Plaintiffs and Represented Employee Group No. 4 to  
15 document less hours than they knowingly worked. For example, Defendants failed to calculate,  
16 account for, and credit Plaintiffs and member of Represented Employee Group No. 4 for all time  
17 worked; Defendants failed to accurately calculate Plaintiffs' and Represented Employee Group  
18 No. 4's overtime hours according to the correct regular rate of pay; and Defendants failed to pay  
19 all monies owed to Plaintiffs and Represented Employee Group No. 4 for all time and overtime  
20 worked.

21       56.    Additionally, Defendants pressured their non-exempt employees to complete their  
22 daily tasks—such as assigned “side work”—and also clock-out within their scheduled time so that  
23 Defendants would not have to pay overtime wages. As a result, Defendants frequently required  
24 Plaintiffs and Represented Employee Group No. 4 to clock out and complete certain tasks off the  
25 clock because if they failed to clock-out on time, Defendants would reprimand them.

26       57.    In addition to forced off-the clock work, on the occasions where Plaintiffs and  
27 Represented Employee Group No. 4 recorded some of their overtime hours, their managers would  
28 go into the timekeeping system and delete the recorded overtime. Certain Plaintiffs and other

1       Represented Employees witnessed managers use their cards to edit employees' end of shift clock-  
2       out times on the registers, so that their time records were revised not to reflect an employee's  
3       overtime worked.

4           58.   Therefore, Defendants failed to pay Plaintiffs and Represented Employee Group  
5       No. 4 for all overtime hours worked at one-and-one-half times the regular rate, and or twice the  
6       regular rate, as the case may be. As a result, Plaintiffs and Represented Employee Group No. 4  
7       are entitled to recover unpaid overtime compensation dating back to November 19, 2011, plus  
8       reasonable attorneys' fees and costs of suit under California Labor Code sections 510 and 1194,  
9       and IWC Wage Order 5-2001.

10

**FIFTH CAUSE OF ACTION  
FOR FAILURE TO PAY SPLIT-SHIFT PREMIUMS**

(Against all Defendants)

11       [Violations of California Labor Code §§ 1194 and 1198, and IWC Wage Order 5-2001(4)]

13           59.   Plaintiffs, on behalf of themselves and the Represented Employees, re-allege and  
14       incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
15       PAGA Representative Action Complaint.

16           60.   Plaintiffs, for themselves and on behalf of Represented Employee Group No. 5.  
17       plead this cause of action against Defendants.

18           61.   IWC Wage Order 5-2001(4) and California Code of Regulations, title 8, section  
19       11050(4) require employers to pay an employee an extra hour of pay whenever that employee  
20       works a split-shift. California Labor Code section 1198 codifies the IWC's Wage Orders.  
21       Further, California Labor Code section 1194, governing claims for unpaid minimum wages or  
22       overtime compensation, is violated where one hour of pay at the minimum wage is not issued to  
23       an employee who has worked a split-shift. (*See, e.g., Aleman v. Airtouch Cellular* (2012) 209  
24       Cal.App.4th 556, 581-582 ["[A]n action for recovery of split shift compensation is governed  
25       by section 1194... " and qualifies as a wage action]; *see also* 8 CCR § 11040(4)(A)-(C).)

26       ///

27       ///

28       ///

1 62. Defendants had no policy of compensating their employees for split-shift intervals.  
2 Defendants' lack of a policy caused Plaintiffs and Represented Employee Group No. 5 to be  
3 harmed in that they were never compensated an additional hour of pay during the occasions they  
4 worked split shift intervals.

5       63. Plaintiffs and Represented Employee Group No. 5 would frequently be required to  
6 report to work in the morning, work a shift, clock-out, and then return later to work the dinner  
7 shift that Defendants scheduled them to work. In fact, certain Plaintiffs worked a split-shift on  
8 numerous occasions during which time Defendants would require Plaintiffs and other Represented  
9 Employee Group No. 5 to clock out for over an hour before clocking-in to work the second shift.  
10 When this occurred, Defendants never paid Plaintiffs or Represented Employee Group No. 5 a  
11 split-shift premium—i.e., an hour of additional pay at their regular rate of pay. In fact, Defendants  
12 never informed Plaintiffs nor Represented Employee Group No. 5 that they were entitled to such a  
13 premium.

14       64. Thus, Defendants intentionally and improperly denied payment of an extra hour of  
15 pay to Plaintiffs and Represented Employee Group No. 5 when Defendants required them to work  
16 split shifts in violation of IWC Wage-Order 5(4) and California Code of Regulations, title 8,  
17 section 11050(4). As a result, Plaintiffs and Represented Employee Group No. 5 are entitled to  
18 recover split shift premiums dating back to November 19, 2011, plus statutory penalties and  
19 reasonable attorneys' fees and costs of suit under California Labor Code sections 1194 and 1198,  
20 and IWC Wage Order 5-2001(4), as well as interest under California Labor Code section 218.6.

**SIXTH CAUSE OF ACTION**  
**FOR FAILURE TO PAY REPORTING TIME WAGES**  
(Against all Defendants)

23 [Violations of California Labor Code §§ 204 and 1198 and IWC Wage Order 5-2001(5)]

24 65. Plaintiffs, on behalf of themselves and the Represented Employees, re-allege and  
25 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
26 PAGA Representative Action Complaint.

27 66. Plaintiffs, for themselves and on behalf of Represented Employee Group No. 6.  
28 plead this cause of action against Defendants.

1       67. IWC Wage Order 5-2001(5) and California Code of Regulations, title 8, section  
2 11050(5) require employers to pay employees for half of their usual or scheduled day's work, but  
3 in no event less than two hours nor more than four hours, at the employee's regular rate of pay, for  
4 each workday that an employee is required to report to work and does report, but is not put to  
5 work, or is furnished less than half of the employee's usual or scheduled day's work. California  
6 Labor Code section 1198 codifies the IWC's Wage Orders. Further, California Labor Code  
7 section 204(a) requires employers to pay employees all wages earned, including reporting time  
8 wages.

9       68. Defendants failed to pay Plaintiffs and Represented Employee Group No. 6  
10 reporting time pay in violation of the California Labor Code, IWC Wage Order 5-2001, and the  
11 California Code of Regulations for shifts they worked where Defendants furnished less than half  
12 of their usual or scheduled day's work. For example, Defendants would schedule Plaintiffs and  
13 Represented Employee Group No. 6 to work a total of approximately 8 hours in a given shift. But  
14 then, after Plaintiffs and Representative Employee Group No. 6 showed up and began work,  
15 Defendants would send them home for the rest of the day after only the first 3 hours of their shifts.  
16 Whenever this occurred, Defendants only paid Plaintiffs and Represented Employee Group No. 6  
17 for the hours actually worked and did not pay them any reporting time pay.

18       69. Thus, Defendants owe Plaintiffs and Represented Employee Group No. 6 the two  
19 to four hours of pay at their regular rates of pay which they were entitled to for the shifts where  
20 they reported to work but were furnished less than half of their usual or scheduled day's work. As  
21 a result, Plaintiffs and the Represented Employee Group No. 6 are entitled to recover reporting  
22 time pay dating back to November 19, 2011, plus reasonable attorneys' fees and costs of suit  
23 under California Labor Code sections 204 and 1198, and IWC Wage Order 5-2001(5).

24       ///

25       ///

26       ///

27       ///

28       ///

**SEVENTH CAUSE OF ACTION**  
**ILLEGAL WAGE STATEMENTS**

[Violations of California Labor Code §§ 226 and 1174]

4 70. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
5 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
6 PAGA Representative Action Complaint.

7           71. Plaintiffs, for themselves and on behalf of Represented Employees plead this cause  
8 of action against Defendants.

9       72.       California Labor Code section 226, subdivision (a), requires employers  
10      semimonthly or at the time of each payment of wages to furnish each employee with an accurate  
11      statement itemizing in writing, among other things, all applicable hourly rates in effect during the  
12      pay period and the number of hours worked at each hourly rate. California Labor Code section  
13      226(e) provides that if an employer knowingly and intentionally fails to provide an accurate  
14      statement itemizing, among other things, all applicable hourly rates and the number of hours  
15      worked at each rate, then the employee is entitled to recover the greater of all actual damages or  
16      fifty (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation up  
17      to four thousand dollars (\$4,000). The one hour of pay an employer must pay to its employees for  
18      violations of California Labor Code section 226.7 are regarded as wages. (*Murphy v. Kenneth*  
19      *Cole Productions* (2007) 40 Cal.4th 1094, 1120.)

20 73. Defendants knowingly and intentionally failed to furnish Plaintiffs and Represented  
21 Employee Group No. 7 with accurate itemized wage statements showing all applicable hourly  
22 rates in effect during each pay period and the corresponding number of hours worked at each  
23 hourly rate in violation of California Labor Code section 226(a)(9). For example, during pay  
24 periods where an employee worked overtime, Defendants furnished itemized wage statements  
25 failing to identify the correct hourly overtime rate, if any was identified at all.

26       74.       Further, from September 2012 and a period of time thereafter, Defendants failed to  
27 provide Plaintiffs and Represented Employee Group No. 7 with any written wage statement  
28 whatsoever at the time of payment and began merely maintaining these wage statements in its own

1 internal electronic database. While employers may use electronic wage statements, they may only  
 2 do so where the employee (1) has the right to receive a written pay stub and (2) can easily access  
 3 the information and convert it to hard copy at no cost to the employee. (*See Dixon, supra, Wage*  
 4 *and Hour: Law and Litigation* at § 5.6 [citing DLSE Opinion Letter 2006.07.06].) Defendants  
 5 neither provided its non-exempt employees with the option to receive physical wage statements  
 6 nor provided its employees a computer to print wage statements at no cost to the employee, in  
 7 violation of California Labor Code section 226. A substantial portion of Defendants' employees  
 8 are incapable of accessing such electronically stored statements because they lack access to a  
 9 computer. Further, the employees that were able to access the information because they had a  
 10 personal computer found the program difficult to use.

11       75. Plaintiffs and Represented Employee Group No. 7 have suffered injuries as a result  
 12 of these violations, to wit: (1) they cannot determine whether they have been paid at the correct  
 13 applicable hourly rate, including the accurate overtime rate; (2) they are unable to determine  
 14 whether they have been paid accurately for all overtime they are entitled to; (3) they are hindered  
 15 or prevented from challenging the overtime rate Defendants paid; (4) they are unable to determine  
 16 whether they received all wages Defendants owed to them; (5) they have difficulty and have  
 17 incurred expense with respect to reconstructing accurate pay records; (6) they are forced to make  
 18 mathematical computations to analyze whether the wages paid in fact compensated them for all  
 19 regular and overtime hours worked; (7) they have been unable to readily determine any of the  
 20 information that is required by California Labor Code section 226(a) to be included in a wage  
 21 statement, including the gross wages earned, the total hours worked, all deductions, the net wages  
 22 earned, the inclusive dates of the applicable, and the name of the legal entity who is the employer  
 23 from and after approximately September 2012; and (8) they had to file this lawsuit to seek redress  
 24 for Defendants' wage statement violations. Therefore, Defendants are liable to Plaintiffs and  
 25 Represented Employee Group No. 7 for the amounts provided by California Labor Code section  
 26 226(e), plus costs and reasonable attorneys' fees.

27       76. In addition, Defendants' issued wage statements to Plaintiffs and Represented  
 28 Employee Group No. 7 that also violated California Labor Code section 226 as a result of all of

1 Defendants' other wage and hour violations described in the first 6 causes of action, above. As a  
2 result, Defendants have necessarily failed to include an accurate representation of the gross and  
3 net wages owed, the correct regular rate of pay, and the overtime rate on their non-exempt  
4 employees' wage statements; thus, Defendants have violated California Labor Code section  
5 226(a).

6 77. Plaintiffs and Represented Employee Group No. 7 also seek and request, under  
7 California Labor Code section 226(g), injunctive relief to ensure Defendants' compliance with  
8 section 226(a), namely, that (i) Defendants discontinue their practice of failing and refusing to  
9 furnish any written wage statements to Represented Employees, and (ii) Defendants furnish  
10 written itemized wage statements to Represented Employees that accurately list all applicable  
11 hourly rates in effect during the pay period and the number of hours worked at each hourly rate.  
12 Plaintiffs also request an award of costs and reasonable attorneys' fees.

13

14

**EIGHTH CAUSE OF ACTION  
FOR UNLAWFUL REPAYMENT OF WAGES TO EMPLOYER**

(Against all Defendants)

[Violation of California Labor Code §§ 221, 350, and 351]

17 78. Plaintiffs, on behalf of themselves and Represented Employees, re-allege and  
18 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
19 PAGA Representative Action Complaint.

20 79. Plaintiffs, for themselves and on behalf of Represented Employee Group No. 8,  
21 plead this cause of action against Defendants.

22 80. California Labor Code section 221 makes it unlawful for an employer to collect or  
23 receive from an employee any part of wages paid to said employee. California Labor Code  
24 section 350 provides that every gratuity or tip constitutes the sole property of an employee to  
25 whom it was paid, given, or left. "Under California law, an employer is not permitted to share in  
26 any such tips left for employees or make deductions from an employee's wages because of those  
27 tips." (Dixon, R. Brian, et al. (February 2014) *Wage and Hour: Law and Litigation*, § 5.20 [citing  
28 Cal. Labor Code § 351].) California Labor Code section 351 prohibits employers from: (1)

1 collecting, taking, or receiving any part of a gratuity “paid, given to, or left for an employee by a  
2 patron,” (2) deducting any amount from wages due to an employee because of a gratuity, or (3)  
3 requiring any employee to credit any amount “of a gratuity against and as a part of the wages due  
4 the employee from the employer.” (Cal. Labor Code § 351.)

5 81. P.F. Chang's deprived Plaintiffs Hunter Kidner and Lizette Vargas, as well as  
6 Represented Employee Goup No. 8 of property and legal rights by encouraging and forcing them  
7 to claim a minimum of 15% of the employee's sales as tips, regardless of the amount of tips the  
8 employee actually received, resulting in employees over-reporting their tips when they, in fact,  
9 received less than 15% of their sales as tips. For example, if an employee made \$100.00 in sales  
10 during a shift but only received 10% of her sales in tips (i.e., \$10.00), P.F. Chang's would require  
11 that employee to claim that she received 15% of her sales in tips (i.e., \$15.00)—which would be  
12 deducting from her pay. Where an employee's tips fell under 15% and that employee claimed his  
13 or her actual amount of sales, the manager would publicly reprimand the employee by posting a  
14 paper with that employee's name on the wall and would highlight the employee's tips and sales,  
15 while writing comments like, "What's wrong with you?," "Don't make me see this again!," or  
16 "Sucks to suck." Additionally, the employee who failed to claim at least 15% would also be  
17 scheduled in a low-traffic (i.e., low-tip) section of the restaurant and scheduled for fewer hours  
18 and less busy hours, all as a means of reprimanding the employee.

19       82.    Thus, Defendants owe Plaintiffs and Represented Employee Group No. 8 damages  
20 in an amount to be determined at trial and any penalties owed under the Labor Code as a result of  
21 Defendant's violations of Labor Code sections 221, 350, and 351.

**NINTH CAUSE OF ACTION**  
**FOR FAILURE TO PAY ALL WAGES DUE UPON ENDING EMPLOYMENT**  
(Against all Defendants)  
[Violation of California Labor Code §§ 201, 202, and 203]

26       83. Plaintiffs, on behalf of themselves and the Represented Employees, re-allege and  
27 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
PAGA Representative Action Complaint.

11

1       84. Plaintiffs, for themselves and on behalf of Represented Employees plead this cause  
2 of action against Defendants.

3       85. California Labor Code section 201 requires an employer remit payment of wages  
4 earned and unpaid immediately upon discharge.

5       86. California Labor Code section 202 requires that if an employee quits his or her  
6 employment, his or her wages shall become due and payable not later than 72 hours thereafter,  
7 unless the employee has given 72 hours previous notice of his or her intention to quit, in which  
8 case the employee is entitled to his or her wages at the time of quitting. California Labor Code  
9 section 202 requires that an employer remit payment to an employee who quits no later than 72  
10 hours thereafter.

11       87. Violations of California Labor Code sections 201 and 202 violate California Labor  
12 Code section 203.

13       88. Plaintiffs and Represented Employee Group No. 9 quit or were discharged from  
14 their employment with Defendants and not paid timely. Plaintiffs and the Represented Employees  
15 were not paid timely because Defendants failed to pay them all wages owed for all of the reasons  
16 described above.

17       89. Additionally, Defendants failed to timely issue final paychecks to Plaintiffs and  
18 Represented Employee Group No. 9. For example, on September 6, 2014, Defendants terminated  
19 Plaintiff Hunter Kidner, but she did not receive her final pay until two to three weeks later. Ms.  
20 Hunter Kidner should have received her final paycheck the day she was terminated. (Cal. Lab.  
21 Cod. § 201). P.F. CHANG'S violated sections 201-203 by failing to pay pay all wages owed at  
22 the time of termination. P.F. CHANG'S has engaged in this same practice towards other  
23 Represented Employees as well.

24       90. Defendants failed to pay said employees any premium payments or timely payment  
25 pursuant to California Labor Code sections 201 and 202. Thus, Defendants are liable for waiting  
26 time penalties. Defendants' failure to pay said wages within the required time was willful within  
27 the meaning of California Labor Code section 203.

28       ///

1       91.     Therefore, each of Plaintiffs and the Represented Employees are entitled to one  
2 day's wages for each day he or she was not timely paid all said wages due, up to a maximum of  
3 thirty days' wages for each employee. Because none of said employees were ever compensated  
4 for meal and/or rest periods they missed, and were never paid other wages referred to in this  
5 PAGA Representative Action Complaint, Plaintiffs and the Represented Employees are each  
6 entitled to thirty days' wages. Plaintiffs and the Represented Employees therefore request waiting  
7 time penalties for all Class Members no longer in Defendants' employ at the time of Judgment.  
8 Plaintiffs also request attorneys' fees and interest as a result of Defendant's violations of Labor  
9 Code §§ 201, 202, and 203.

10

#### **TENTH CAUSE OF ACTION**

11

#### **LABOR CODE PRIVATE ATTORNEY GENERAL ACT ALLEGATIONS**

12

(Against all Defendants)

13

[Violation of California Labor Code §§ 2698-2699.5]

14

92.     Plaintiffs, on behalf of themselves and the Represented Employees, re-allege and  
15 incorporate by reference, as though fully set forth herein, all of the preceding paragraphs of this  
16 PAGA Representative Action Complaint.

17

93.     Plaintiffs, for themselves and on behalf of all Represented Employees plead this  
18 cause of action against Defendants.

19

94.     Plaintiffs and the Represented Employees are 'aggrieved employee' under the  
20 California Labor Code Private Attorney General Act ("PAGA") as they were/are employed by  
21 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
22 violations alleged herein. As such, they seek to recover, on behalf of themselves and all other  
23 current and former hourly employees of Defendants, the civil penalties provided by PAGA.

24

95.     Plaintiffs seek to recover the PAGA civil penalties through a representative action  
25 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 56  
26 Cal.4<sup>th</sup> 969 (DJ达尔 9631). Therefore, Plaintiffs are not required to seek class certification of the  
27 PAGA claims. (See also *Brown v. Ralphs Grocery Store*, (2011) 197 Cal.App.4<sup>th</sup> 489, 494.)

1       96. Pursuant to Labor Code §2699.3 (a), on November 19 and 20, 2014, Plaintiffs sent  
2 via certified U.S. mail written correspondence to the California Labor and Workplace  
3 Development Agency (“LWDA”) and to P.F. CHANG’S in accordance with the Private Attorney  
4 General Act, concerning the specific provisions of the Labor Code alleged to have been violated,  
5 including the facts and theories to support the alleged violations. As of the time of filing this  
6 PAGA Representative Action Complaint, more than 33 days have elapsed since providing the  
7 above-described written notice pursuant to Labor Code §2699.3, and the LWDA has never sent  
8 Plaintiffs any kind of written notice regarding their claims. Therefore, Plaintiffs have satisfied the  
9 prerequisites to bringing a civil penalty action under PAGA (Labor Code § 2699.3(a)(2)(C).)

10 97. As such, Plaintiffs represent the Represented Employees in this action and,  
11 pursuant to Labor Code §2699, Plaintiffs seek all applicable PAGA civil penalties for each current  
12 and former non-exempt employee of Defendants in the State of California during the applicable  
13 statute of limitations in which any and/or all of the above-described Labor Code violations  
14 occurred. Plaintiffs also seek reasonable attorney's fees and costs.

## PRAYER FOR RELIEF

17 Plaintiffs, on behalf of themselves individually and on behalf of the Represented  
18 Employees, pray for relief and judgment against Defendants, jointly and severally as follows:

19 a. For all applicable statutory penalties under the First through Seventh Causes of  
20 Action provided for under the Labor Code sections cited herein;

21 b. For injunctive relief under the Seventh and Eighth Causes of Action pursuant to  
22 Labor Code section 226(g), requiring Defendants to list, among other things, all applicable hourly  
23 rates in effect during the pay period and the number of hours worked at each hourly rate on the  
24 employees' wage statements;

25 c. For reasonable attorney's fee and costs as provided for under the Labor Code sections  
26 cited herein:

27 d. For all applicable civil penalties under the First and Second Causes of Action  
28 provided for by the California Labor Code Private Attorney General Act (Lab. C. §2698 et seq.) as

1 a result of Defendants' violations of the Labor Code as alleged herein;

2 e. For reasonable attorney's fees and costs as provided for under the Labor Code Private

3 Attorney General Act;

4 f. For interest pursuant to the Labor Code sections cited herein; and

5 g. For such other relief as the Court deems just and proper.

6

7 **DEMAND FOR JURY**

8 Plaintiffs hereby demand a jury trial.

9

10 Dated: January 7, 2015

11 **HOGUE & BELONG**

12 By: 

13 JEFFREY L. HOGUE, ESQ.  
14 TYLER J. BELONG, ESQ.  
15 BRYCE A. DODDS, ESQ.  
16 MARISSA C. MARXEN, ESQ.  
17 Attorneys for Plaintiffs

18  
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CM-010

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY</b> (Name, State Bar number, and address): Tyler J. Belong, Esq. (SBN 234543) <b>HOGUE &amp; BELONG</b> 430 Nutmeg Street, Second Floor San Diego, CA 92103 <b>TELEPHONE NO.</b> (619) 238-4720 <b>FAX NO.</b> (619) 238-5260 <b>ATTORNEY FOR</b> (Name): Plaintiffs		<b>FOR COURT USE ONLY</b>				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Riverside <b>STREET ADDRESS:</b> 4050 Main Street <b>MAILING ADDRESS:</b> same <b>CITY AND ZIP CODE:</b> Riverside, 92501 <b>BRANCH NAME:</b> Riverside Historic Courthouse						
<b>CASE NAME:</b> Kidner, et al. v. P.F. Chang's China Bistro, Inc., et al.						
<b>CIVIL CASE COVER SHEET</b> <table border="0"> <tr> <td><input checked="" type="checkbox"/> Unlimited</td> <td><input type="checkbox"/> Limited</td> </tr> <tr> <td>(Amount demanded exceeds \$25,000)</td> <td>(Amount demanded is \$25,000 or less)</td> </tr> </table>		<input checked="" type="checkbox"/> Unlimited	<input type="checkbox"/> Limited	(Amount demanded exceeds \$25,000)	(Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
<input checked="" type="checkbox"/> Unlimited	<input type="checkbox"/> Limited					
(Amount demanded exceeds \$25,000)	(Amount demanded is \$25,000 or less)					
		<b>CASE NUMBER:</b>  <b>JUDGE:</b>  <b>DEPT:</b>				

Items 1-6 below must be completed (see Instructions on page 2).

<b>1. Check one box below for the case type that best describes this case:</b>		<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403)	
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30)	
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)	
<b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)	
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)	
		<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)	

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary   b.  nonmonetary; declaratory or injunctive relief   c.  punitive

4. Number of causes of action (specify): 10

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 7, 2015

Tyler J. Belong, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties In Complex Cases.** In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## Auto Tort

Auto (22)–Personal Injury/Property

Damage/Wrongful Death

Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)

Asbestos Property Damage

Asbestos Personal Injury/

Wrongful Death

Product Liability (not asbestos or toxic/environmental) (24)

Medical Malpractice (45)

Medical Malpractice—

Physicians &amp; Surgeons

Other Professional Health Care

Malpractice

Other PI/PD/WD (23)

Premises Liability (e.g., slip and fall)

Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)

Intentional Infliction of

Emotional Distress

Negligent Infliction of

Emotional Distress

Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business

Practice (07)

Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)

Defamation (e.g., slander, libel)

(13)

Fraud (16)

Intellectual Property (19)

Professional Negligence (25)

Legal Malpractice

Other Professional Malpractice (not medical or legal)

Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)

Other Employment (15)

## CASE TYPES AND EXAMPLES

## Contract

Breach of Contract/Warranty (06)

Breach of Rental/Lease

Contract (not unlawful detainer or wrongful eviction)

Contract/Warranty Breach–Seller

Plaintiff (not fraud or negligence)

Negligent Breach of Contract/

Warranty

Other Breach of Contract/Warranty

Collections (e.g., money owed, open

boot accounts) (09)

Collection Case–Seller Plaintiff

Other Promissory Note/Collections

Case

Insurance Coverage (not provisionally

complex) (18)

Auto Subrogation

Other Coverage

Other Contract (37)

Contractual Fraud

Other Contract Dispute

## Real Property

Eminent Domain/Inverse

Condemnation (14)

Wrongful Eviction (33)

Other Real Property (e.g., quiet title) (26)

Writ of Possession of Real Property

Mortgage Foreclosure

Quiet Title

Other Real Property (not eminent

domain, landlord/tenant, or

foreclosure)

## Unlawful Detainer

Commercial (31)

Residential (32)

Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)

Petition Re: Arbitration Award (11)

Writ of Mandate (02)

Writ–Administrative Mandamus

Writ–Mandamus on Limited Court

Case Matter

Writ–Other Limited Court Case

Review

Other Judicial Review (39)

Review of Health Officer Order

Notice of Appeal–Labor

Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)

Construction Defect (10)

Claims Involving Mass Tort (40)

Securities Litigation (28)

Environmental/Toxic Tort (30)

Insurance Coverage Claims

(arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)

Abstract of Judgment (Out of County)

Confession of Judgment (non-domestic relations)

Sister State Judgment

Administrative Agency Award (not unpaid taxes)

Petition/Certification of Entry of Judgment on Unpaid Taxes

Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)

Other Complaint (not specified above) (42)

Declaratory Relief Only

Injunctive Relief Only (non-harassment)

Mechanics Lien

Other Commercial Complaint Case (non-tort/non-complex)

Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate

Governance (21)

Other Petition (not specified above) (43)

Civil Harassment

Workplace Violence

Elder/Dependent Adult Abuse

Election Contest

Petition for Name Change

Petition for Relief From Late Claim

Other Civil Petition